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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

4 -----:
5 JAIME GARCIA, et al., :
6 Plaintiffs :
7 v. : CASE NO.
8 RONALD D. KIRSTIEN, et al., : L-01-103
9 Defendants :
10 -----:

11 Deposition of JOSE JAIME GARCIA
12 Baltimore, Maryland
13 Thursday, January 8, 2004
14 9:00 a.m.
15
16
17
18
19

20 Job No.:1-27865
21 Pages 1 - 152
22 Reported by: Kathleen T. Dunn

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1 Deposition of JOSE JAIME GARCIA held at
2 the offices of:
3 ALBRIGHT, BROWN & GOERTEMILLER
4 Suite 2150
5 120 East Baltimore Street
6 Baltimore, Maryland 21202
7 (410) 244-0350
8

9 Pursuant to agreement, before Kathleen
10 T. Dunn, court reporter and Notary Public of
11 Harford County, Maryland.
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1 A P P E A R A N C E S
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16 ON BEHALF OF DEFENDANTS ROTHSTEIN
17 AND KIRSTIEN:
18 CRAIG D. ROSWELL, ESQUIRE
19 NILES, BARTON & WILMER, LLP
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21 Baltimore, Maryland 21202
22 (410) 783-6300

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1 A I finished what I was doing and, you
2 know, that was not a long term employment. That
3 was -- you know, the contract was up.

4 Q I thought you said you were with Chef
5 Garcia for 16 years.

6 A That's correct.

7 Q I assume you are including the
8 predecessor companies to Chef Garcia. Is that --
9 let me back up. When did you start with Chef
10 Garcia, Inc.?

11 A In 1984.

12 Q And in 1984 who owned Chef Garcia,
13 Inc.?

14 A I did.

15 Q At what point in time did you change
16 the ownership of Chef Garcia, Inc.?

17 A I didn't change the ownership.

18 Q Did there ever come a time where the
19 ownership in Chef Garcia, Inc. changed?

20 A I guess when we got the investors in
21 1994.

22 Q Did you have involvement in a company

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1 known as JEJ?

2 A JEJ was a parent company of Chef
3 Garcia.

4 Q And JEJ existed in 1984?

5 A That's correct.

6 Q How about McWax & Company?

7 A McWax & Company, I acquired that in
8 1990, I believe.

9 Q What type of operation was McWax &
10 Company?

11 A That was a USDA operation.

12 Q Forgive my ignorance in the food
13 business. What is a USDA operation?

14 A USDA is where you process meats and you
15 have a federal inspector at the premises.

16 Q So the meat goes through the
17 slaughterhouse and then comes to a USDA kitchen
18 for further processing?

19 A For further processing, that is
20 correct.

21 Q And then what business was JEJ in?

22 A JEJ was the parent company of both

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1 companies, McWax and Chef Garcia.

2 Q Do you know what state Chef Garcia was
3 incorporated in?

4 A It was just in the state of Virginia.

5 Q Was JEJ solely a parent company or did
6 it actually produce and manufacture items as
7 well?

8 A Can you repeat your question, please?

9 Q I will do the best I can. Did JEJ --
10 which entity did you use to actually produce the
11 products that you sold?

12 A Chef Garcia and Tortilla Maya.

13 Q What is Tortilla Maya?

14 A It was basically the one that started

15 --

16 (Interruption by the reporter.)

17 A That was the first branded name that
18 JEJ started with.

19 Q So JEJ branded the name Tortilla Maya?

20 A That's correct.

21 Q When was the first time you had outside
22 investors in any of your companies?

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1 A That was --

2 (Interruption by the reporter.)

3 A These were the only investors,

4 Rothstein and Kirstien.

5 Q Are you familiar with an entity known

6 as O'Stein Brothers Limited Partnership No. 4?

7 A I think I have seen one. I am not

8 familiar with it.

9 Q Do you know if O'Stein Brothers Limited

10 Partnership No. 4 owned stock in Chef Garcia,

11 Inc.?

12 A I have no idea.

13 Q Do you know if Mr. Rothstein or Mr.

14 Kirstien individually owned any stock in Chef

15 Garcia, Inc.?

16 A I don't know their dealings.

17 Q After 1994 did you own stock in Chef

18 Garcia, Inc.?

19 A Yes, I did.

20 Q Do you know what percentage of the

21 stock you owned?

22 A Fifty percent.

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1 make people accountable for --

2 Q Did Mrs. Garcia work for the company in
3 1994?

4 A Yes, she did.

5 Q What was her role?

6 A She basically run the human resources,
7 and take all of my calls coming in, screening,
8 and do the bank deposits, go to the bank, screen
9 all of the new hires.

10 Q Did she have any role in actual
11 accounts payable?

12 A No.

13 Q Who mailed out checks for accounts
14 payable?

15 A She did. The checks were run by the
16 accountant and she will mail it out.

17 Q So Walter would create the checks?

18 A Right.

19 Q And then Mrs. Garcia would make sure
20 they went out?

21 A Right.

22 Q Did her duties and responsibilities

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1 ahead.

2 A I am trying to recall exactly when they
3 were, whether it was before or after we kind of
4 got tight on cash.

5 (Defendants' Deposition Exhibit Number
6 10 was marked for identification and was attached
7 to the transcript.)

8 Q I will show you Exhibit Number 10, I
9 believe. Is this the agreement you entered into
10 with the O'Stein Brothers Limited Partnership No.
11 4?

12 MR. ALBRIGHT: Do you want the witness
13 to read the whole thing or just a portion?

14 MR. ROSWELL: I am going to ask him
15 some questions about certain parts of it.

16 MR. ALBRIGHT: Or do you want him to
17 identify his signature?

18 MR. ROSWELL: Why don't we do that.

19 Q Did you sign this agreement, Mr.
20 Garcia?

21 A Yes, I did.

22 Q Other than the day you signed it, have

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1 you seen this document at any other point?

2 A I may have.

3 Q Do you have any other written
4 agreements between yourself and O'Stein Brothers
5 Limited Partnership No. 4?

6 A I believe there is other agreement.

7 Q What is the other agreement?

8 A That is the -- either that -- I mean
9 this may be the only one. I don't know. I got
10 to read it and see what it says because there was
11 a job agreement and there was also a stock
12 purchase agreement.

13 Q An employment agreement?

14 A An employment agreement, right.

15 Q Was that between you and O'Stein
16 Brothers or between you and Chef Garcia?

17 A Between us and Chef Garcia.

18 Q Well, you said you wanted a chance to
19 read that. Please feel free. I do want to ask
20 you some questions about it, so if you would like
21 to look through it --

22 A Go ahead.

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1 A September?

2 Q 1994.

3 A I don't recall.

4 Q Did you need \$60,000 to fund the
5 September 30, 1994 payroll obligation?

6 A I don't recall in particular.

7 Q Were you having any problems meeting
8 your payroll obligations in September, 1994?

9 A We might have. Again, you know, we
10 were living, you know, and our cash flow issue
11 was -- came along.

12 Q Additionally, O'Stein No. 4 was to
13 transfer \$86,000 to the accounts of trade
14 creditors of JEJ and McWax. Did they do that?

15 A Again, I don't recall. I don't
16 remember seeing those particular --

17 Q The agreement continues that the
18 "\$86,000 in satisfaction of outstanding and
19 overdue claims so that JEJ and McWax may continue
20 to receive manufacturing supplies and inventory
21 to continue to produce salable goods."

22 Were you having a problem receiving

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1 MR. ALBRIGHT: No. I object. Why
2 don't you leave the room here. Off the record.
3 (The Garcias leave the room.)
4 (Discussion off the record.)
5 (Brief recess was taken.)
6 (The Garcias return.)

7 BY MR. ROSWELL:

8 Q Mr. Garcia, I am done with this
9 agreement, so we can hand that over there.
10 Mr. Garcia, do you personally own any patents or
11 trademarks?
12 A Do I personally own any trademarks?
13 Q Patents, anything like that.
14 A I used to. Chef Garcia, Tortilla Maya.
15 Q Chef Garcia, Tortilla Maya?
16 A Right.
17 (Interruption by the reporter.)
18 A Umkax, U M K A X.
19 Q And were these registered trademarks?
20 A They were registered, yes, in
21 Virginia.
22 Q When did you register them in

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1 Virginia?

2 A When I first started the company. The
3 first one was Tortilla Maya. The second was Chef
4 Garcia, and the third one was Umkax.

5 Q And they were registered in Virginia
6 and were they registered with you as the owner or
7 the company as the owner?

8 A The company, JEJ.

9 Q So the trademarks belong to JEJ?

10 A JEJ.

11 (Defendants' Deposition Exhibit Number
12 11 was marked for identification and was attached
13 to the transcript.)

14 Q Mr. Garcia, let me show you what we
15 marked as Exhibit Number 11. Have you seen that
16 memo before?

17 A No.

18 Q Do you see your name listed as the
19 first person to whom it was purportedly sent?

20 A Yeah, but I never got it.

21 Q You never got it?

22 A (Witness shakes head.)

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1 check, who signed it, who delivered the check,
2 that sort of thing? Can you tell me what the
3 control was for the payment of trade payables?

4 A The invoice would go out. It will come
5 back signed by the receiver. It will go in as a
6 receivable. When the money was received, it will
7 accumulate to the particular broker.

8 Q Let's flip this around. I am
9 interested in just the -- I think -- and maybe
10 you are answering my questions in a longer way.
11 If you had a payable, if somebody gave you an
12 invoice, what process did you go through in order
13 to determine how and when to pay that? Not how
14 and when, but what process did -- the invoice
15 comes in to Chef Garcia. What was the process
16 from receiving that invoice to the invoice going
17 out? Who would touch it? Who would sign the
18 checks?

19 A The invoice was processed. The
20 accountant will process the check, you know,
21 according to the date it needs to be paid. The
22 check is either brought to me or Mrs. Garcia when

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1 and filed various things, including claims.

2 Q What date were you terminated on, sir?

3 A I think January 8 or January 14th.

4 Q Somewhere between --

5 A Somewhere around there. I don't recall
6 the exact date.

7 Q Who was at the meeting when you were
8 terminated?

9 A That was Mr. Kirstien, and Rothstein,
10 and Mr. Albright, and myself.

11 Q You testified earlier about \$50,000 --

12 A And David Norman.

13 Q David Norman. You testified earlier
14 that Randy Habeck was paid \$50,000 I think it was
15 in the middle of 1997?

16 A Somewhere around there. I don't
17 recollect the exact time, but I know I can't
18 forget that because I was approached with that.

19 Q How were you approached with that?

20 A Randy -- not Randy. Harvey Rothstein
21 approached me saying to me that I better stop
22 playing with his money. So when I reply I say

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1 A More than full time.

2 Q Right. In other words, you were
3 devoting you life to Chef Garcia at that point?

4 A That's right.

5 Q Okay.

6 Those are my questions. That's it.

7 MR. ROSWELL: Nothing further.

8 MR. ALBRIGHT: I have a couple of
9 questions. Off the record.

10 (Discussion off the record.)

11 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

12 BY MR. ALBRIGHT:

13 Q Would you take Exhibit 16, that is
14 Defendants' 16. Look at the first page and it is
15 1.3. Do you see that? "In the event of the
16 termination of the employee's employment, the
17 employer shall have no further obligation to pay
18 any further compensation to the employee, except
19 to pay all monies owed to employee, and to take
20 all commercially reasonable efforts to relieve
21 employee of company liabilities prior to the last
22 day of employment."

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1 Do you recall that provision?

2 A Yes.

3 Q Is that related to your understanding
4 of exoneration of guarantees?

5 A That is correct.

6 MR. ROSWELL: Objection. Go ahead.

7 A What I understood from this is that at
8 any termination the investors will take
9 responsibility and take me off all of the
10 guarantees. That is to my understanding. And it
11 was discussed as well, you know, orally.

12 Q Have you come across any evidence that
13 the defendants have done anything at all to seek
14 to relieve you from the guarantees?

15 A Absolutely nothing and none -- the
16 other way around because they didn't pay the rent
17 and they let them put judgment against my assets
18 and that is --

19 (Interruption by the reporter.)

20 A Yes, they have done that on purpose to
21 breach my assets.

22 Q Just a couple more questions. With